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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/721,035	11/21/2003	Helen T. Pham	PHA.001.P	5030

7590 08/09/2005

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 5677 Oberlin Drive
 San Diego, CA 92121

EXAMINER

CANFIELD, ROBERT

ART UNIT	PAPER NUMBER
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3635

DATE MAILED: 08/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/721,035

Applicant(s)

PHAM, HELEN T.

Examiner

Robert J. Canfield

Art Unit

3635

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 March 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,5,7 and 9-14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,5,7 and 9-14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 March 2005 is/are: a) ☒ accepted ^{AND} b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

1. This Office action is in response to the amendment filed 03/28/05. Claims 1, 2, 5, 7 and 9-14 are pending. Claims 3, 4, 6, and 8 have been canceled.

2. The replacement drawing sheets filed 03/28/05 are accepted as they overcome the objections set forth in sections 2 and 3 of the last Office action. However, the drawings remain objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the head and neck rest removably affixed to the device must be shown or the feature(s) canceled from the claim(s). No new matter should be entered. Applicant argues that Figure 1D shows this feature. The examiner disagrees. Figure 1D merely shows a head rest adjacent the sunshield device. There is nothing illustrating any removable affixing.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New

Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

3. The disclosure is objected to because of the following informalities: The "Description of the Figures" reference "Figure 1". There is no Figure 1. The examiner suggests applicant replace "Figure 1: is a diagrammatic representation" with - - Figures 1A-1E are diagrammatic representations - -.

Appropriate correction is required.

4. Claims 1-14 are objected to because of the following informalities: "said anchor means" in claim 10 lacks antecedent basis. It appears claim 10 should depend from claim 7 rather than claim 6. Similarly In claim 11, "said at least one stake" lacks antecedent basis. It appears claims 11 should depend from claim 10 rather than claim 7. Also, "said head and neck rest" in claims 13 and 14 lacks antecedent basis. It appears that each of these claims should depend from claim 12 rather than claim 9. In claim 1, line 14, it appears the word "and" should appear after "top support beams,". In claims 7 and 9 "said base" lacks antecedent basis. Appropriate correction is required.

5. Applicant is advised that should claim 7 be found allowable, claim 9 will be objected to under 37 CFR 1.75 as being a substantial duplicate thereof. When two claims in an application are duplicates or else are so close in content that they both

cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim.

See MPEP § 706.03(k).

6. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

7. Claims 1, 2, 5, 7 and 9-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 2,543,597 to Peery in view of U.S. Patent 5,752,537 to Kranzler.

Peery provides a sun shielding device comprising a structural frame having a base support beam 6, and two sides 20. Each of the two sides 20 comprise a top support beam 7 and a lower support beam 8 and/or 9. The top support beam 7 and lower support beams 8/9 are joined together at their ends by an adjustable angle hinge 11. Sides 20 are affixed to one another by base support beam 6 such that the sides are positioned parallel to each other and about 90 degrees to the base support beam 6. The top support beams 7 and the lower support beams 8/9 may be adjusted independently of one another. A cover means is affixed to the support frame between the top support beams and between the lower support beams as well as between the top support beams and lower support means at 20. The sides are V-shaped (see Figure 2). Waterproof canvas is disclosed as a material for the cover. This meets the limitations of

claim 5. Anchor means / stake 14 are provided. Head and neck rest or pillow 29 is provided.

Peery fails to provides is that the side covering means is provided as netting.

Kranzler teaches at column 6, lines 51+, that it was known at the time of the invention that the side covers of sunshade/shelter may be made of canvas or netting. It would have been obvious at the time of the invention to one having ordinary skill in the art that the side covering means 20 of Peery could have been made from netting as taught and suggested in Kranzler. It would have been an obvious substitution of one known material for another material well known as an equivalent material in the same environment.

The pillow 29 could be removed by taking out the stitching fastening it. Alternatively. Hook and loop type fasteners would have been an obvious equivalent fastening means to the stitching to one having ordinary skill in the art at the time of the invention. Inflatable pillows are well known and would have been an obvious equivalent to the pillow of Peery to one having ordinary skill in the art at the time of the invention.

8. Applicant's arguments have been considered but are moot in view of the new ground(s) of rejection.

The examiner took Official Notice in the previous Office action that netting would have been an obvious material choice for side walls in the tent and canopy arts.

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Applicant disagreed and challenged the examiner to provide at least one reference if this feature was so widely known. The examiner has listed several references on the attach PTO 892 which teach either using netting on side walls or the equivalence of netting and canvas as a material choice for side walls.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., that either one of the top beams and or either one of the lower beams can be adjusted independently) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Claim 1 only requires that the top and or lower beams may be adjusted independently. The top support beams of Peery can be adjusted independently of the lower support beams. There is nothing in the claim that requires each of the top beams (or each of the lower beams) to be able to be adjusted independent of one another. Further, it is unclear if the specification even supports such a feature.

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

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§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert J. Canfield whose telephone number is 571-272-6440. The examiner can normally be reached on M-Th.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl Friedman can be reached on 571-272-6842. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Robert J Canfield
Primary Examiner
Art Unit 3635

A handwritten signature in black ink, appearing to read 'R. Canfield', written over the printed name and title.

08/07/05

Replacement Sheet

1/2

OK
TO ENTER
(2E) 7/29/05

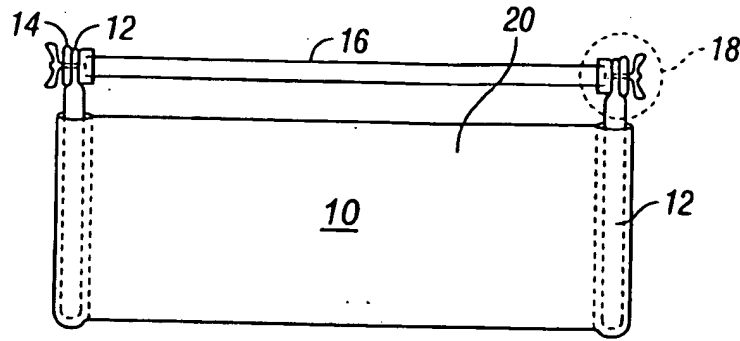


FIG. 1A

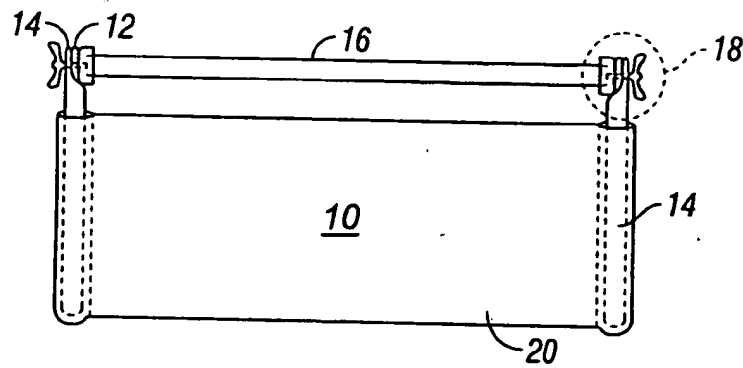


FIG. 1B

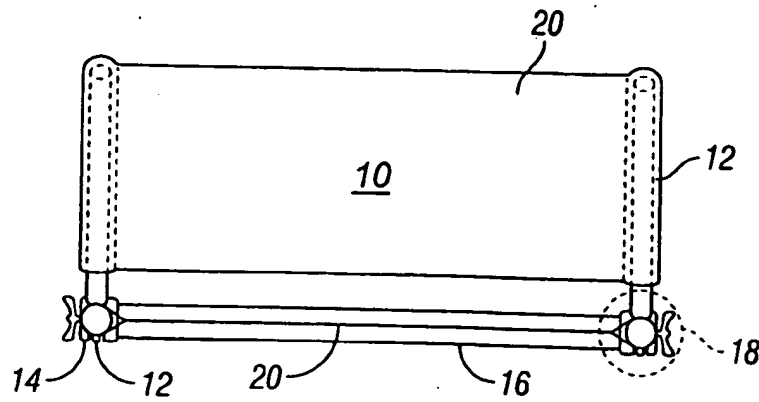


FIG. 1C

Replacement Sheet
2/2

OK
to enter
8/7/02

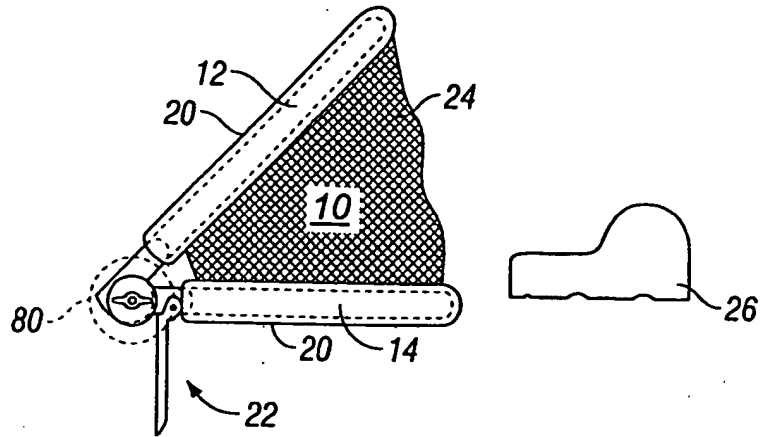


FIG. 1D

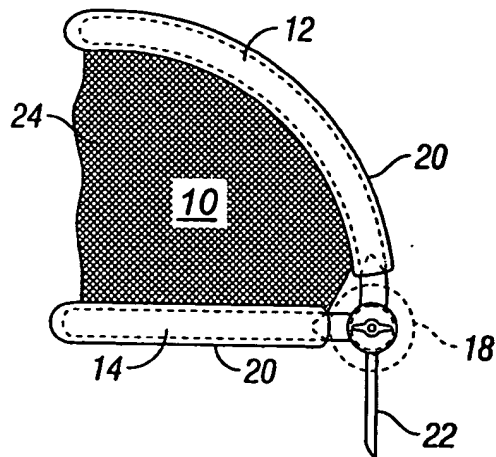


FIG. 1E